

schneider, marchant

From: Brown, Ron
Sent: Monday, January 11, 2010 3:13 PM
To: schneider, marchant
Subject: RE: Commission Permit Question - SPEX 2009-0006, Dulles Industrial Park South.

Marchant - This does not seem to me to deal with "Public service corporation".

Zoning Ordinance §6-1101 (A) provides that no ... public service corporation facility ...shall be constructed, established or authorized, unless and until the general location

VA Code Section 56-1 defines "public service corporation" to include gas companies. Isn't Propane a "gas"?

David's e-mail focuses on "public utility", and I agree Amerigas is probably not a "public utility". However, his response does not seem to me to exclude Amerigas from the statutory definition in Code §56.1: "'Public service corporation' or 'public service company' includes gas, ... companies".

Have we approved propane storage or distribution uses in the past without CMPT??

rb

From: schneider, marchant
Sent: Thursday, January 07, 2010 4:16 PM
To: Brown, Ron
Cc: Armstrong, Van; schneider, marchant
Subject: Commission Permit Question - SPEX 2009-0006, Dulles Industrial Park South.

Hi, Ron:

I received the below from the Applicant looking further into the Public Service Corporation question. Can we discuss when you are available?

Thank you!

Marchant

From: David Ludwig [mailto:dludwig@dglegal.com]
Sent: Thursday, January 07, 2010 4:03 PM
To: schneider, marchant; Thomas M. Dunlap
Subject: RE: Commission Permit - SPEX 2009-0006, Dulles Industrial Park South.

Marchant:

Looking at the permit issue a bit more carefully, the definitions in Article 8 of the Zoning Ordinance contain the following definition:

Public Utilities/Facilities: Public parks, playgrounds, trails, paths and other recreational areas and other public open spaces; scenic and historic sites; schools and other public buildings and structures. Any water or sewer

system serving more than two (2) lots, and any building or structure owned by a public utility as defined in Section 56-232 of the Virginia State Code, all building and facilities owned by a public service corporation as defined in Section 56-1 of the Virginia State Code.

Va. Code § 56-1 states:

"Public service corporation" or "public service company" includes gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include (i) a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any company described in subdivision (b)(10) of § 56-265.1.

Va. Code § 56-232 states, in part:

A. The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250:

1. Shall mean and embrace every corporation (other than a municipality), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water, or sewerage facilities, either directly or indirectly, to or for the public. ...

I was previously looking at a different definition of public utility (§ 56-88), but the Ordinance specifically and solely references these two definitions—neither of which apply. So, I don't think a permit is necessary, which explains why one was never required of Amerigas in the past. Can you run this by Ron in the morning and let us know how we need to proceed?

Best Regards,
David Ludwig

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From: David Ludwig
Sent: Thursday, January 07, 2010 12:20 PM
To: schneider, marchant; Thomas M. Dunlap
Subject: RE: Commission Permit - SPEX 2009-0006, Dulles Industrial Park South.

Marchant:

Regarding the commission permit, my preliminary investigation has not yielded a clear answer one way or the other. Amerigas has not been required to apply for such a permit in the past, but I think the statute could be read to apply to them, and I haven't found any cases addressing the issue. I'm thinking that we may want to apply for the permit just to be on the safe side, assuming the process is not costly and will not result in any further delays. Can you send me some information about what AmeriGas would need to do to get a commission permit?

Best Regards,
David Ludwig

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From: schneider, marchant [mailto:Marchant.Schneider@loudoun.gov]
Sent: Wednesday, December 23, 2009 1:00 PM
To: David Ludwig; Thomas M. Dunlap
Cc: Roy Clark; schneider, marchant
Subject: RE: Commission Permit - SPEX 2009-0006, Dulles Industrial Park South.

Tom and David:

Regarding whether or not the proposed use requires Commission Permit approval per Zoning Ordinance 6-1101:

Zoning Ordinance Section 6-1101 (A) provides that no ... public utility facility or public service corporation facility ...shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted comprehensive plan.

VA Code Section 56-1 defines "public service corporation" to include gas companies. Section 56-265.1 defines public utility as "any company which owns or operates facilities within the Commonwealth of Virginia ... for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power ...

Can you track down whether or not AmeriGas fits this definition?

Marchant